

The Honorable Benjamin H. Settle

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

STATE OF WASHINGTON,  
  
Plaintiff,

v.

FRANCISCAN HEALTH SYSTEM  
d/b/a CHI FRANCISCAN HEALTH;  
FRANCISCAN MEDICAL GROUP;  
THE DOCTORS CLINIC, A  
PROFESSIONAL CORPORATION; and  
WESTSOUND ORTHOPAEDICS, P.S.,  
  
Defendants.

NO. 3:17-cv-05690-BHS

**STIPULATED MOTION FOR  
ENTRY OF STIPULATED  
PROTECTIVE ORDER**

**NOTE ON MOTION  
CALENDAR: OCTOBER 12,  
2017**

**I. INTRODUCTION AND REQUESTED RELIEF**

The parties submit this stipulated motion requesting that the Court enter the Stipulated Protective Order filed herewith as Attachment A.

The parties have agreed to depart from this district's model protective order in certain respects, and are submitting as Attachment B a redlined version identifying departures from the model in accordance with LCR 26(c)(2).

**II. LCR 26(C)(1) CERTIFICATION**

The undersigned hereby certify that they have met and conferred in good faith on September 22, 2017 via phone and email and have agreed to the Stipulated Protective Order filed herewith.

**III. CONCLUSION**

The parties respectfully request that the Court enter the Stipulated Protective Order filed herewith.

SO STIPULATED this 12th day of October, 2017.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 12th, 2017, I served the foregoing document and its attachments on the following counsel via electronic mail:

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15 I certify under penalty of perjury under the laws of the state of Washington that the  
16 foregoing is true and correct.

17 DATED this 12th day of October, 2017, at Seattle, WA.

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# Attachment A

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STATE OF WASHINGTON,

Plaintiff,

v.

FRANCISCAN HEALTH SYSTEM  
d/b/a CHI FRANCISCAN HEALTH;  
FRANCISCAN MEDICAL GROUP;  
THE DOCTORS CLINIC, A  
PROFESSIONAL CORPORATION;  
and WESTSOUND ORTHOPAEDICS,  
P.S.,

Defendants.

CASE NO. 17-cv-05690-BHS

**STIPULATED  
PROTECTIVE ORDER  
[PROPOSED]**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential

1 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
2 confidential information under seal.

3 2. DEFINITIONS

4 2.1 “Competitive Decisionmaking” means making or influencing important decisions  
5 regarding a firm’s business operations, including development or implementation of competitive  
6 strategies, business plans, and third-party negotiations, but does not include the rendering of purely  
7 legal advice as to litigation or antitrust issues related to such decisions.

8 2.2 “Confidential Information” means any trade secret or other confidential research,  
9 development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G), as  
10 well as Sensitive Personal Information and Protected Health Information, as defined herein, or any  
11 document, transcript, or other material containing such information that has not been made public  
12 by the person claiming confidentiality.

13 2.2 “Highly Confidential Information” means any Confidential Information that the  
14 designating party reasonably believes to be so competitively sensitive that it is entitled to  
15 extraordinary protections. Highly Confidential Information shall presumptively include, but not  
16 be limited to, any claims data produced to the Plaintiff during the Investigation by non-party  
17 healthcare payers, as well as any future claims data to be produced during discovery in this Action.

18 2.3 “Investigation” means the pre-Complaint inquiry into the matters at issue in this  
19 Action by the Washington State Attorney General pursuant to Chapter 19.86 RCW.

20 2.4 “Investigation Materials” means documents, communications, or testimony that (i)  
21 any non-party provided to Plaintiff either voluntarily or under compulsory process in anticipation  
22 of or during the Investigation until the filing of Plaintiff’s Complaint in this Action, including any  
23 document constituting or containing any communication between Plaintiff and any non-party  
24 during the Investigation until the filing of Plaintiff’s Complaint in this Action, or (ii) that any  
25 Defendant, or any affiliated person or entity, provided to Plaintiff during the Investigation.



2.5 “Protected Health Information” means individually identifiable health information that is transmitted or maintained in electronic media or any other form including demographic information collected from an individual, that (i) is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse, and (ii) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and (1) that identifies the individual, or (2) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

2.6 “Protected Material” shall mean any material produced during the Investigation or discovery in this Action that is designated as Confidential Information or Highly Confidential Information.

2.7 “Sensitive Personal Information” shall refer, but not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit number, driver’s license number, state-issued identification number, passport number, and date of birth (other than year).

2.8 This “Action” means the above-captioned action pending in this Court, including any pretrial, trial, post-trial, or appellate proceedings.

### 3. SCOPE

The protections conferred by this agreement cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by non-parties, parties, or their counsel that might reveal Protected Material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise. Before the final pretrial conference, the parties will meet and confer and attempt to reach agreement on the terms of an order governing the use of Protected Material at trial, which may provide that some such

Protected Material shall be filed under seal and not become part of the public record. This Order shall govern unless and until it is modified or replaced. All parties or non-parties designating Protected Material under this Order will be given prior notice and an opportunity to participate in the hearing or briefing on any motion for an order governing the use of Protected Material at trial.

For purposes of the Washington Public Records Act:

- a. any trade secret or other confidential research, development, or commercial information designated as Confidential Information under this Order, or competitively sensitive information designated as Highly Confidential Information under this Order, shall be enjoined from disclosure under the Washington Public Records Act, as authorized under RCW 42.56.540. The Court finds that disclosure of such Protected Material under the Washington Public Records Act would clearly not be in the public interest and would substantially and irreparably damage the party or non-party who produced that Material. The Material shall be considered exempt from disclosure under RCW 42.56.540;
- b. Sensitive Personal Information designated as Confidential Information under this Order shall be considered “personal information” under RCW 42.56.230 and shall be exempt from disclosure; and
- c. Protected Health Information designated as Confidential Information under this Order shall be protected from disclosure under RCW 70.02.050(2)(a) and RCW 42.56.360(2).

Nothing in this Order prevents any person, including members of the public, from seeking modification of this Order, upon motion made pursuant to the rules of this Court.

#### 4. ACCESS TO AND USE OF PROTECTED MATERIAL

4.1 Basic Principles. A receiving party may use Protected Material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Protected Material may be disclosed only to the categories of persons and under the conditions described in this agreement. Protected Material

1 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
 2 that access is limited to the persons authorized under this agreement. In no event may Protected  
 3 Material be used in connection with Competitive Decisionmaking.

4 4.2 Disclosure of “Confidential” Information or Items. Unless otherwise ordered by the  
 5 court or permitted in writing by the designating party, a receiving party may disclose any  
 6 Confidential Information only to:

7 (a) the receiving party’s outside counsel of record in this Action, as well as  
 8 employees and independent contractors of counsel to whom it is reasonably necessary to disclose  
 9 the information for this litigation;

10 (b) experts and consultants to whom disclosure is reasonably necessary for this  
 11 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (c) the court, court personnel, and court reporters and their staff;

13 (d) copy or imaging services retained by counsel to assist in the duplication of  
 14 Protected Material, provided that counsel for the party retaining the copy or imaging service  
 15 instructs the service not to disclose any Protected Material to third parties and to immediately  
 16 return all originals and copies of any Protected Material;

17 (e) witnesses whose depositions have been noticed in the Action to whom  
 18 disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to  
 19 Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.  
 20 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
 21 must be separately bound by the court reporter and may not be disclosed to anyone except as  
 22 permitted under this agreement;

23 (f) the author or recipient of a document containing the information or a  
 24 custodian or other person who otherwise possessed or knew the information; and

25 (g) for Defendants Franciscan Health System and Franciscan Medical Group,  
 26 in-house counsel Vickie Williams, Esq and Theresa Rambosek, Esq. For avoidance of doubt, no

1 such in-house counsel shall use Confidential Information in any way in connection with  
2 Competitive Decisionmaking.

3 For purposes of clarity, a party or non-party that designates its own material as Confidential  
4 Information may share such Confidential Information with its own employees.

5 4.3 Disclosure of Highly Confidential Information. Unless otherwise ordered by the  
6 court or permitted in writing by the designating party, a receiving party may disclose any Highly  
7 Confidential Information only to persons set forth in subsections 4.2(a) through (f) of this Order,  
8 and may be disclosed to and used by those persons only in this Action.

9 4.4 Filing Protected Material. Local Civil Rule 5(g) sets forth the procedures that must  
10 be followed and the standards that will be applied when a party seeks permission from the court to  
11 file Protected Material. After following that procedure, including the meet-and-confer  
12 requirements of Local Civil Rule 5(g)(1)(A), the parties agree that LCR 5(g)(3) will govern the  
13 use of Protected Material in any filings before the Court.

14 4.5 Right to Exclude Non-Authorized Persons from Deposition. The designating party  
15 shall have the right to exclude all persons not authorized to have access to Protected Materials  
16 from the room where the deposition is being conducted, but only during that portion of the  
17 deposition in which the Protected Material is disclosed.

## 18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Service of Protective Order. Whenever discovery is sought by subpoena from a  
20 non-party in this Action, a copy of this Order shall accompany the subpoena.

21 5.2 Exercise of Restraint and Care in Designating Material for Protection. Each party  
22 or non-party that designates information or items for protection under this agreement must take  
23 care to limit any such designation to specific material that qualifies under the appropriate  
24 standards. The designating party must designate for protection only those parts of material,  
25 documents, items, or oral or written communications that qualify, so that other portions of the  
26

1 material, documents, items, or communications for which protection is not warranted are not swept  
2 unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
5 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
6 and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated for  
8 protection do not qualify for protection, the designating party must promptly notify all other parties  
9 that it is withdrawing the mistaken designation.

10 5.3 Manner and Timing of Designations. Except as otherwise provided in this  
11 agreement (see, *e.g.*, second paragraph of subsection 5.3(a) below), or as otherwise stipulated or  
12 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
13 be clearly so designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents,  
15 deposition exhibits, interrogatory responses, responses to requests for admission, and other written  
16 discovery responses, but excluding transcripts of depositions or other pretrial or trial proceedings),  
17 the designating party must affix the words "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"  
18 to each page that contains Protected Material. If only a portion or portions of the material on a  
19 page qualifies for protection, the producing party also must clearly identify the protected portion(s)  
20 (*e.g.*, by making appropriate markings in the margins). Where Protected Material is produced in  
21 an electronic format on a disk, USB drive, portable hard drive, or other removable media that  
22 contains exclusively Protected Material, the "CONFIDENTIAL" or "HIGHLY  
23 CONFIDENTIAL" designation shall be placed on the removable media.

24 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
25 and any participating non-parties must identify on the record, during the deposition or other pretrial  
26 proceeding, all protected testimony, without prejudice to their right to so designate other testimony

after reviewing the transcript. Any party or non-party may, within fifteen (15) days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as Protected Material. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.4 Designation of Investigation Materials. Designation of investigative deposition transcripts and documents produced during the Investigation is governed as follows:

(a) All transcripts of depositions taken by Plaintiff during the Investigation will be treated as Confidential Information in their entirety for twenty (20) days after entry of this Order. At any time during the 20-day period, any Party may designate as Confidential or Highly Confidential any portion of the transcript, by page and line, and any accompanying exhibits. Any portion of a transcript or exhibit not designated Confidential or Highly Confidential during this 20-day period will be deemed not to constitute Protected Material, subject to Section 5.7 below.

(b) All documents and data produced by another party or a non-party to Plaintiff during the Investigation will be treated as if they have been designated Highly Confidential Information in their entirety for thirty (30) days after entry of this Order. At any time during the 30-day period, any party or non-party may designate any document or portion of a document produced during the Investigation as Confidential or Highly Confidential by providing Plaintiff with document production numbers or other means of easily identifying the designated documents. Within seven (7) days following the 30-day period, Plaintiff shall transmit to Defendants all confidentiality designations received from a non-party. Any document or portion of a document not designated

1 Confidential or Highly Confidential during this 30-day period will be deemed not to constitute  
 2 Protected Material, subject to Section 5.7 below.

3 (c) To avoid imposing unnecessary additional burden on Defendants that produced  
 4 materials to the Plaintiff during the Investigation, materials that were designated as “Confidential”  
 5 during the Investigation shall treated as designated as “Confidential” under subsection 5.4(b) this  
 6 Order, with the exception of the following categories of documents produced by Defendants during  
 7 the investigation: 1) the written agreements forming the Kitsap Transactions, 2) Defendants’  
 8 responses to Plaintiff’s Civil Investigative Demands, and 3) transcripts of depositions taken during  
 9 the Investigation. For those identified categories of documents, Defendants that produced such  
 10 material must designate any Confidential or Highly Confidential material under the process laid  
 11 out above in subsections 5.5(a) and (b). The designation of Investigative materials as  
 12 “Confidential” under this subsection shall not infringe upon Plaintiff’s right under Section 6 to  
 13 challenge the designation at any time.

14 5.5 Notice to Non-Parties. Within five (5) business days after the Court’s entry of this  
 15 Order, Plaintiff shall send, by electronic mail, facsimile, or overnight delivery, a copy of this Order  
 16 to each non-party that produced Investigation Materials to it (or, if represented by counsel, the  
 17 non-party’s counsel). Any non-party who concludes that this Order does not adequately protect its  
 18 confidential information shall have until fifteen (15) days after the Court’s entry of this Order to  
 19 petition the Court for additional protection for its confidential information. Plaintiff shall not  
 20 produce any Investigation Materials received from non-party until after this 15-day period  
 21 concludes, nor shall Plaintiff produce any Investigation Materials while any non-party’s timely-  
 22 filed petition for additional protection is pending before the Court.

23 5.6 Designation of Investigation Material Containing Sensitive Personal Information  
 24 or Protected Health Information. During the course of the Investigation, Defendants may have  
 25 produced Investigation Materials to Plaintiff that contain Sensitive Personal Information or  
 26 Protected Health Information. It shall be the sole responsibility of the Defendant that produced

1 such Investigation Material to take the necessary steps to protect the Sensitive Personal  
 2 Information or Protected Health Information from disclosure in this Action, including properly  
 3 designating such material pursuant to this Order. Plaintiff shall in no event be subject to liability,  
 4 including under the Health Insurance Portability and Accountability Act, for the inadvertent  
 5 disclosure of Sensitive Personal Information or Protected Health Information related to any  
 6 Defendant's failure to take necessary steps to protect or designate such information.

7       5.7 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 8 designate qualified information or items does not, standing alone, waive the designating party's  
 9 right to secure protection under this agreement for such material. Upon timely correction of a  
 10 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
 11 in accordance with the provisions of this agreement. No person or party shall incur any liability  
 12 for any disclosure, otherwise permitted under this Order, that occurred prior to receipt of notice of  
 13 a belated designation.

## 14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15       6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
 16 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
 17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 18 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
 19 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 20 original designation is disclosed.

21       6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
 22 regarding confidential designations without court involvement. Any motion regarding confidential  
 23 designations or for a protective order must include a certification, in the motion or in a declaration  
 24 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
 25 affected parties in an effort to resolve the dispute without court action. The certification must list  
 26



the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

#### 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “Confidential” or “Highly Confidential” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose Protected Material may be affected.

The above provisions shall also apply if Plaintiff receives a request for Protected Material under the Washington Public Records Act, Chapter 42.56 RCW.

#### 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this agreement, the receiving

1 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
 2 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
 3 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
 4 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
 5 Bound” that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
 7 MATERIAL

8 When a producing party gives notice to receiving parties that certain inadvertently  
 9 produced material is subject to a claim of privilege or other protection, the obligations of the  
 10 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
 11 is not intended to modify whatever procedure may be established in an e-discovery order or  
 12 agreement that provides for production without prior privilege review. The parties agree to the  
 13 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 10. NON TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this Action, including all appeals, each receiving  
 16 party must return all Protected Material to the producing party, including all copies, extracts and  
 17 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

18 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
 19 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
 20 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
 21 product, even if such materials contain Protected Material.

22 The confidentiality obligations imposed by this agreement shall remain in effect until a  
 23 designating party agrees otherwise in writing or a court orders otherwise.

24 ///

25 ///

26 ///

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: October 12, 2017

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*Attorneys for Plaintiff State of Washington*

DATED: October 12, 2017

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DATED: October 12, 2017

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STIPULATED PROTECTIVE ORDER  
[PROPOSED]  
USDC-WD Cause No. 17-cv-05690-BHS

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1 DATED: October 12, 2017

By: s/ Matthew Turetsky  
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*Attorneys for Defendant Westsound  
Orthopaedics, P.S.*

8 PURSUANT TO STIPULATION, IT IS SO ORDERED

9 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
10 documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding  
11 in any other court, constitute a waiver by the producing party of any privilege applicable to those  
12 documents, including the attorney-client privilege, attorney work-product protection, or any other  
13 privilege or protection recognized by law.  
14

15 DATED: \_\_\_\_\_  
16

17  
18 THE HONORABLE BENJAMIN H. SETTLE  
United States District Court Judge  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on \_\_\_\_\_ [date]  
in the case of *State of Washington v. Franciscan Health System, et al.*, No. 3:17-cv-05690-BHS.  
I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
any information or item that is subject to this Stipulated Protective Order to any person or entity  
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

# Attachment B

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STATE OF WASHINGTON,

Plaintiff,

v.

FRANCISCAN HEALTH SYSTEM  
d/b/a CHI FRANCISCAN HEALTH;  
FRANCISCAN MEDICAL GROUP;  
THE DOCTORS CLINIC, A  
PROFESSIONAL CORPORATION;  
and WESTSOUND ORTHOPAEDICS,  
P.S.,

Defendants.

CASE NO. 17-cv-05690-BHS

**STIPULATED  
PROTECTIVE ORDER  
[PROPOSED]  
[REDLINE VERSION]**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential

1 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
2 confidential information under seal.

3 ~~2. “CONFIDENTIAL” MATERIAL~~

4 ~~“Confidential” material shall include the following documents and tangible things~~  
5 ~~produced or otherwise exchanged: [The parties must include a list of specific documents such as~~  
6 ~~“company’s customer list” or “plaintiff’s medical records;” do not list broad categories of~~  
7 ~~documents such as “sensitive business material”].~~

8 2. DEFINITIONS

9 2.1 “Competitive Decisionmaking” means making or influencing important decisions  
10 regarding a firm’s business operations, including development or implementation of competitive  
11 strategies, business plans, and third-party negotiations, but does not include the rendering of purely  
12 legal advice as to litigation or antitrust issues related to such decisions.

13 2.2 “Confidential Information” means any trade secret or other confidential research,  
14 development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G), as  
15 well as Sensitive Personal Information and Protected Health Information, as defined herein, or any  
16 document, transcript, or other material containing such information that has not been made public  
17 by the person claiming confidentiality.

18 2.2 “Highly Confidential Information” means any Confidential Information that the  
19 designating party reasonably believes to be so competitively sensitive that it is entitled to  
20 extraordinary protections. Highly Confidential Information shall presumptively include, but not  
21 be limited to, any claims data produced to the Plaintiff during the Investigation by non-party  
22 healthcare payers, as well as any future claims data to be produced during discovery in this Action.

23 2.3 “Investigation” means the pre-Complaint inquiry into the matters at issue in this  
24 Action by the Washington State Attorney General pursuant to Chapter 19.86 RCW.

25 2.4 “Investigation Materials” means documents, communications, or testimony that (i)  
26 any non-party provided to Plaintiff either voluntarily or under compulsory process in anticipation



of or during the Investigation until the filing of Plaintiff's Complaint in this Action, including any document constituting or containing any communication between Plaintiff and any non-party during the Investigation until the filing of Plaintiff's Complaint in this Action, or (ii) that any Defendant, or any affiliated person or entity, provided to Plaintiff during the Investigation.

2.5 "Protected Health Information" means individually identifiable health information that is transmitted or maintained in electronic media or any other form including demographic information collected from an individual, that (i) is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse, and (ii) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and (1) that identifies the individual, or (2) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

2.6 "Protected Material" shall mean any material produced during the Investigation or discovery in this Action that is designated as Confidential Information or Highly Confidential Information.

2.7 "Sensitive Personal Information" shall refer, but not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit number, driver's license number, state-issued identification number, passport number, and date of birth (other than year).

2.8 This "Action" means the above-captioned action pending in this Court, including any pretrial, trial, post-trial, or appellate proceedings.

### 3. SCOPE

The protections conferred by this agreement cover not only ~~confidential material~~Protected Material (as defined above), but also (1) any information copied or extracted from ~~confidential material~~Protected Material; (2) all copies, excerpts, summaries, or compilations of ~~confidential~~

~~material~~Protected Material; and (3) any testimony, conversations, or presentations by non-parties,  
parties, or their counsel that might reveal ~~confidential material~~Protected Material.

However, the protections conferred by this agreement do not cover information that is in  
the public domain or becomes part of the public domain through trial or otherwise. Before the final  
pretrial conference, the parties will meet and confer and attempt to reach agreement on the terms  
of an order governing the use of Protected Material at trial, which may provide that some such  
Protected Material shall be filed under seal and not become part of the public record. This Order  
shall govern unless and until it is modified or replaced. All parties or non-parties designating  
Protected Material under this Order will be given prior notice and an opportunity to participate in  
the hearing or briefing on any motion for an order governing the use of Protected Material at trial.

For purposes of the Washington Public Records Act:

a. any trade secret or other confidential research, development, or commercial  
information designated as Confidential Information under this Order, or competitively  
sensitive information designated as Highly Confidential Information under this Order,  
shall be enjoined from disclosure under the Washington Public Records Act, as  
authorized under RCW 42.56.540. The Court finds that disclosure of such Protected  
Material under the Washington Public Records Act would clearly not be in the public  
interest and would substantially and irreparably damage the party or non-party who  
produced that Material. The Material shall be considered exempt from disclosure under  
RCW 42.56.540;

b. Sensitive Personal Information designated as Confidential Information under this  
Order shall be considered “personal information” under RCW 42.56.230 and shall be  
exempt from disclosure; and

c. Protected Health Information designated as Confidential Information under this Order  
shall be protected from disclosure under RCW 70.02.050(2)(a) and RCW 42.56.360(2).

Nothing in this Order prevents any person, including members of the public, from seeking modification of this Order, upon motion made pursuant to the rules of this Court.

4. ACCESS TO AND USE OF ~~CONFIDENTIAL~~PROTECTED MATERIAL

4.1 Basic Principles. A receiving party may use ~~confidential material~~Protected Material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. ~~Confidential material~~Protected Material may be disclosed only to the categories of persons and under the conditions described in this agreement. ~~Confidential material~~Protected Material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement. In no event may Protected Material be used in connection with Competitive Decisionmaking.

4.2 Disclosure of “~~CONFIDENTIAL~~Confidential” Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any ~~confidential material~~Confidential Information only to:

(a) the receiving party’s outside counsel of record in this ~~action~~Action, as well as employees and independent contractors of counsel to whom it is reasonably necessary to disclose the information for this litigation;

~~(b) —the officers, directors, and employees (including in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular document or material produced is for Attorney’s Eyes Only and is so designated;~~

~~(c)~~ experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

~~(d)~~ the court, court personnel, and court reporters and their staff;

~~(e)~~ copy or imaging services retained by counsel to assist in the duplication of ~~confidential material~~Protected Material, provided that counsel for the party retaining the copy or

imaging service instructs the service not to disclose any ~~confidential material~~Protected Material to third parties and to immediately return all originals and copies of any ~~confidential material~~Protected Material;

(f) ~~during their~~e) witnesses whose depositions, ~~witnesses~~ have been noticed in the ~~action~~Action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal ~~confidential material~~Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

~~4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted.~~(g) for Defendants Franciscan Health System and Franciscan Medical Group, in-house counsel Vickie Williams, Esq and Theresa Rambosek, Esq. For avoidance of doubt, no such in-house counsel shall use Confidential Information in any way in connection with Competitive Decisionmaking.

For purposes of clarity, a party or non-party that designates its own material as Confidential Information may share such Confidential Information with its own employees.

4.3 Disclosure of Highly Confidential Information. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any Highly Confidential Information only to persons set forth in subsections 4.2(a) through (f) of this Order, and may be disclosed to and used by those persons only in this Action.

1 4.4 Filing Protected Material. Local Civil Rule 5(g) sets forth the procedures that must  
 2 be followed and the standards that will be applied when a party seeks permission from the court to  
 3 file ~~material under seal.~~ Protected Material. After following that procedure, including the meet-  
 4 and-confer requirements of Local Civil Rule 5(g)(1)(A), the parties agree that LCR 5(g)(3) will  
 5 govern the use of Protected Material in any filings before the Court.

6 4.5 Right to Exclude Non-Authorized Persons from Deposition. The designating party  
 7 shall have the right to exclude all persons not authorized to have access to Protected Materials  
 8 from the room where the deposition is being conducted, but only during that portion of the  
 9 deposition in which the Protected Material is disclosed.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Service of Protective Order. Whenever discovery is sought by subpoena from a  
 12 non-party in this Action, a copy of this Order shall accompany the subpoena.

13 5.2 Exercise of Restraint and Care in Designating Material for Protection. Each party  
 14 or non-party that designates information or items for protection under this agreement must take  
 15 care to limit any such designation to specific material that qualifies under the appropriate  
 16 standards. The designating party must designate for protection only those parts of material,  
 17 documents, items, or oral or written communications that qualify, so that other portions of the  
 18 material, documents, items, or communications for which protection is not warranted are not swept  
 19 unjustifiably within the ambit of this agreement.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 21 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
 22 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
 23 and burdens on other parties) expose the designating party to sanctions.

24 If it comes to a designating party's attention that information or items that it designated for  
 25 protection do not qualify for protection, the designating party must promptly notify all other parties  
 26 that it is withdrawing the mistaken designation.

1        5.23 Manner and Timing of Designations. Except as otherwise provided in this  
 2 agreement (see, *e.g.*, second paragraph of ~~sections~~subsection 5.23(a) below), or as otherwise  
 3 stipulated or ordered, disclosure or discovery material that qualifies for protection under this  
 4 agreement must be clearly so designated before or when the material is disclosed or produced.

5            (a) Information in documentary form: (*e.g.*, paper or electronic documents~~and,~~  
 6 deposition exhibits, interrogatory responses, responses to requests for admission, and other written  
 7 discovery responses, but excluding transcripts of depositions or other pretrial or trial proceedings),  
 8 the designating party must affix the ~~word~~words “CONFIDENTIAL” or “HIGHLY  
 9 CONFIDENTIAL” to each page that contains ~~confidential material~~Protected Material. If only a  
 10 portion or portions of the material on a page qualifies for protection, the producing party also must  
 11 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).  
 12 Where Protected Material is produced in an electronic format on a disk, USB drive, portable hard  
 13 drive, or other removable media that contains exclusively Protected Material, the  
 14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” designation shall be placed on the  
 15 removable media.

16            (b) Testimony given in deposition or in other pretrial proceedings: the parties  
 17 and any participating non-parties must identify on the record, during the deposition or other pretrial  
 18 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
 19 after reviewing the transcript. Any party or non-party may, within fifteen (15) days after receiving  
 20 the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
 21 exhibits thereto, as ~~confidential.~~Protected Material. If a party or non-party desires to protect  
 22 confidential information at trial, the issue should be addressed during the pre-trial conference.

23            (c) Other tangible items: the producing party must affix in a prominent place  
 24 on the exterior of the container or containers in which the information or item is stored the word  
 25 “CONFIDENTIAL.”” or “HIGHLY CONFIDENTIAL.” If only a portion or portions of the  
 26

information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.35.4 Designation of Investigation Materials. Designation of investigative deposition transcripts and documents produced during the Investigation is governed as follows:

(a) All transcripts of depositions taken by Plaintiff during the Investigation will be treated as Confidential Information in their entirety for twenty (20) days after entry of this Order. At any time during the 20-day period, any Party may designate as Confidential or Highly Confidential any portion of the transcript, by page and line, and any accompanying exhibits. Any portion of a transcript or exhibit not designated Confidential or Highly Confidential during this 20-day period will be deemed not to constitute Protected Material, subject to Section 5.7 below.

(b) All documents and data produced by another party or a non-party to Plaintiff during the Investigation will be treated as if they have been designated Highly Confidential Information in their entirety for thirty (30) days after entry of this Order. At any time during the 30-day period, any party or non-party may designate any document or portion of a document produced during the Investigation as Confidential or Highly Confidential by providing Plaintiff with document production numbers or other means of easily identifying the designated documents. Within seven (7) days following the 30-day period, Plaintiff shall transmit to Defendants all confidentiality designations received from a non-party. Any document or portion of a document not designated Confidential or Highly Confidential during this 30-day period will be deemed not to constitute Protected Material, subject to Section 5.7 below.

(c) To avoid imposing unnecessary additional burden on Defendants that produced materials to the Plaintiff during the Investigation, materials that were designated as "Confidential" during the Investigation shall treated as designated as "Confidential" under subsection 5.4(b) this Order, with the exception of the following categories of documents produced by Defendants during the investigation: 1) the written agreements forming the Kitsap Transactions, 2) Defendants' responses to Plaintiff's Civil Investigative Demands, and 3) transcripts of depositions taken during



the Investigation. For those identified categories of documents, Defendants that produced such material must designate any Confidential or Highly Confidential material under the process laid out above in subsections 5.5(a) and (b). The designation of Investigative materials as “Confidential” under this subsection shall not infringe upon Plaintiff’s right under Section 6 to challenge the designation at any time.

5.5 Notice to Non-Parties. Within five (5) business days after the Court’s entry of this Order, Plaintiff shall send, by electronic mail, facsimile, or overnight delivery, a copy of this Order to each non-party that produced Investigation Materials to it (or, if represented by counsel, the non-party’s counsel). Any non-party who concludes that this Order does not adequately protect its confidential information shall have until fifteen (15) days after the Court’s entry of this Order to petition the Court for additional protection for its confidential information. Plaintiff shall not produce any Investigation Materials received from non-party until after this 15-day period concludes, nor shall Plaintiff produce any Investigation Materials while any non-party’s timely-filed petition for additional protection is pending before the Court.

5.6 Designation of Investigation Material Containing Sensitive Personal Information or Protected Health Information. During the course of the Investigation, Defendants may have produced Investigation Materials to Plaintiff that contain Sensitive Personal Information or Protected Health Information. It shall be the sole responsibility of the Defendant that produced such Investigation Material to take the necessary steps to protect the Sensitive Personal Information or Protected Health Information from disclosure in this Action, including properly designating such material pursuant to this Order. Plaintiff shall in no event be subject to liability, including under the Health Insurance Portability and Accountability Act, for the inadvertent disclosure of Sensitive Personal Information or Protected Health Information related to any Defendant’s failure to take necessary steps to protect or designate such information.

5.7 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s



right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement. No person or party shall incur any liability for any disclosure, otherwise permitted under this Order, that occurred prior to receipt of notice of a belated designation.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this ~~action as “CONFIDENTIAL,”~~ Action as “Confidential” or “Highly Confidential” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose ~~confidential material~~ Protected Material may be affected.

The above provisions shall also apply if Plaintiff receives a request for Protected Material under the Washington Public Records Act, Chapter 42.56 RCW.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed ~~confidential material~~ Protected Material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the

receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties— agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

#### 10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this ~~action~~Action, including all appeals, each receiving party must return all ~~confidential material~~Protected Material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain ~~confidential material~~Protected Material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

///

///

///

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: October 12, 2017

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*Attorneys for Plaintiff State of Washington*

STIPULATED PROTECTIVE ORDER

[PROPOSED]

[REDLINE VERSION]

USDC-WD Cause No. 17-cv-05690-BHS

13

ATTORNEY GENERAL OF WASHINGTON

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1 DATED: October 12, 2017

By: s/ Mitchell D. Raup

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*forthcoming*)

Herbert F. Allen (*pro hac vice application*  
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12 DATED: October 12, 2017

By: s/ Douglas C. Ross

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*Attorneys for Defendant The Doctors Clinic,*  
*a Professional Corporation*

19 DATED: October 12, 2017

By: s/ Matthew Turetsky

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*Attorneys for Defendant Westsound*  
*Orthopaedics, P.S.*

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE BENJAMIN H. SETTLE  
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on \_\_\_\_\_ [date]  
in the case of *State of Washington v. Franciscan Health System, et al.*, No. 3:17-cv-05690-BHS.  
I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
any information or item that is subject to this Stipulated Protective Order to any person or entity  
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_